

MT LEGISLATIVE HISTORY

Chapter 251 1961

Bill H (S) 20

Original bill & hist. C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) FEB 22 ✓ C

Hearing Date(s) JAN 11 ✓ C

FEB 23 ✓ C

JAN 18 ✓ C

 C

JAN 20 ✓ C

 C

JAN 23 ✓ C

JAN 24 ✓ C

Date Out Feb 23 ✓ C

JAN 24 ✓ C

Did this bill originate in an interim committee? Yes No

Committee

Report

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January 11, 1961.

SENATE COMMITTEE ON JUDICIARY

The first meeting of the Judiciary Committee held January 11, 1961. The meeting was called to order by the Chairman, Senator Mahoney and the following Committee Members were present:

Senators: Mahoney, Dussault, Cashmore, Cumming, Grieve, Harken, McDonnell, McKenna and McKeon.

Senate Bill #9 - Create Montana Habitual Criminal Act. Motion made and seconded that this be continued until Friday 13, 1961.

Senate Bill #17 - Must relinquish party line or public phone in emergency. Motion made by Senator McKenna and seconded by Senator MacDonnell that the bill be passed. Motion carried and so ordered.

Senate Bill #20 - Create office of Investment Commissioner. Agreed to continue this till Wednesday January 18, 1961.

Senate Bill #28 - Court Reporters' Rise in Salary. Continued until Friday 13, 1961.

Business the meeting adjourned.

January 18, 1961.

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SENATE COMMITTEE ON JUDICIARY

Meeting was called to order by Chairman, Senator Mahoney
at 2:30 P.M., January 18, 1961, with the following Committee
members present:

Senators: Mahoney, Dussault, Grieve, Harken,
McDonnell, McKenna and McKeon.

Senate Bill #20 - Create office of Investment Commissioner.
The following gentlemen met with the Committee
in behalf of this bill: Mr. Harry Jones
introduced James Newton, SEC Rep. out of Seattle,
Robert Sullivan, Dean of Law School, Missoula;
J. McCafferty, Clint Strannahan, Ted Sorenson
and Ted Hodges. Those against the bill were
E. J. Foley, attorney from Butte and Robert H.
Nelson, mining consultant. It was agreed on
by the committee that this be held over till
the amendments were available.

Senate Bill -67-Const. amendment eliminating justices of
the peace as const. officers. A sub-committee
of two - Harken and Dussault to check with
Keller on this bill.

Senate Bill #65 - The Uniform Arrest Act. McKeon made the
motion that Senate Bill #65 do not pass.
McKenna seconded it. Motion carried and so
ordered.

Senate Bill #87 - Establish merit system for county deputy
sheriffs. Short discussion followed. Motion
made by McDonnell for do not pass and seconded
by Harken. Motion carried and so ordered.

Bill #21 - Extend to 12/31/62 issuance of non-
resident antelope and deer licenses.
Motion for do not pass was made by [unclear]

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January 20, 1961

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SENATE COMMITTEE OF JUDICIARY

The meeting was called to order by Chairman, Senator Mahoney.
At 3:30 P. M., January 20, 1961. The following Committee
Members were present:

Senators: Mahoney, Dussault, Grieve, Harken,
McDonnell and McKenna.

Senator McKeon was excused.

Senate Bill #20-Create office of Investment Commissioner.
Dorothy Hatfield, Attorney of Law of Great Falls
opponent to this bill met with the committee and
presented her views. The amendments presented
by James Newton, SEC representative out of Seattle
were approved. Senator McDonnell made a motion
that the Bill do pass as amended. McKenna
seconded the motion. Then McDonnell withdrew his
motion and committee agreed to hold the same
over till Monday, January 23, 1961.

Senate Bill #53 -Contributions among tortfeasors. Agreed
on by this committee that it be held over till
Monday, January 23, 1961.

Senate Bill #67-Const. amendment eliminating justices of
the peace as const. officers. A lengthy
discussion was held and then Dussault suggested
to defer action until a later date. So agreed.

Senate Bill #34-Extend duration of chattel mortgage lien
to 7 years. Pass till Monday, January 23.

Senate Bill #104-Relating to the filing of satisfaction
discharges of chattel mortgages etc.
was discussed. Dussault moved that
it be referred in with McDonnell's bill.

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January 23, 1961.

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SENATE COMMITTEE ON JUDICIARY

Meeting of the Judiciary Committee was called to order by Chairman, Senator Mahoney, at 3:30 P. M. on January 23, 1961. The following committee members were present:

Senators: Mahoney, Dussault, Cashmore, Cumming, Grieve, Harken, McDonnell, McKenna and McKeon.

Senate Bill #115 - Senator Brenner met with the Committee in behalf of this bill. After he was dismissed Senator McKeon gave his views. McKenna made the motion that the bill do pass, Grieve seconded the motion. Motion carried and so ordered.

Senate Bill #52 - Senator Sagunsky met with the committee and discussed the title of this bill. McKeon made a motion that they concur on title of Bill and the motion was seconded by Dussault. Motion carried.

Senate Bill #34 - Wesley W. Wertz, attorney, came in as a committee of one and discussed this bill. A sub-committee of two, Harken and McDonnell were appointed to check on this matter.

Senate Bill #20 - Lief Erickson, attorney for several mining companies came and gave his opinion which was in opposition to this bill. Committee adjourned this bill till a later date.

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JAN 29

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...y, Dussault, Grieve, Harken
Donnell, McKenna and McKeon

Bill #138 - Senator Dave E. Newman met with the
Committee and read a letter received from
Edward C. Wren, Commissioner of Agriculture.
Discussion followed. McKenna made a motion
that the bill do pass. Dussault seconded.
The motion carried and so ordered.

Senate Bill #85 - Senator Gordon McGowan was present to
give his views in this matter. McKeon made a
motion that this bill do pass. Harken seconded
the motion. Motion carried and so ordered.

Senate Bill #175 - This bill was introduced by McGowan by
request. Cashmore made the motion it do no pass
and Harken seconded it. Motion carried and so
ordered.

Senate Bill 103 -McKeon explains this bill and a lengthy
discussion follows. Agreed on by the committee
that McKeon and Harken work this bill over and
report back at a later date.

Senate Bill #167 - This bill introduced by Dussault by request.
McKeon made the motion that the bill do pass.
Cumming made a second to that motion. Motion
carried and so ordered.

Senate Bill #168 - Hold over till the following day.

Senate Bill #85 - McDonnell made the motion for do pass
and it was seconded by Cumming. Motion
carried and so ordered.

Senate Bill #34 - Agreed on by committee that Harken
work this bill over.

Senate Bill #20 - McKenna (Fergus) made the motion that
this bill do pass as amended. Harken seconds
the motion. Motion carried and so ordered.

Bill #105 - McKeon makes a motion that this
bill do pass as amended. McDonnell seconded
the motion. Motion carried and so ordered.

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STATEMENT OF LEIF ERICKSON IN OPPOSITION TO

SENATE BILL 20

A casual examination of Senate Bill No. 20 reveals that it very materially increases the burden of qualifying securities of Montana Corporations for sale within the State. Such an examination will also show that the bill is full of ambiguities and uncertainties which would place every corporation, investment broker, salesman or advisor in jeopardy if he tried to qualify securities by registration with the investment commissioner under section 10. In my opinion, if Senate Bill 20 becomes a law there will be no registration by qualification with the Montana Investment Commissioner under Section 10, but instead every corporation or others seeking to qualify securities for sale within the State of Montana will have to register by coordination under Section 9. That means that the securities will have to be qualified under the Federal Securities and Exchange Act. In my opinion, the cost of such qualification will not be less than \$15,000.00 and would be prohibitory in the case of smaller Montana Corporations.

In view of our concern for encouragement of business and for industrial expansion in Montana, a bill which would so seriously discourage new ventures should not be passed unless the present blue sky law is seriously deficient in the protection it offers to investors. The history of the present act demonstrates that it is sufficient and, in my opinion, in many respects it offers greater protection to the investing public than does Senate Bill 20. For the benefit of the members of the committee who are not familiar with the present Montana law, I shall analyze it very briefly.

The original Blue Sky Act was passed in 1913. It was

amended in 1929, 1931, 1933 and again in 1957.

The Act defines Investment Companies and Securities. It exempts certain securities. It also defines stock brokers and agents. Generally there are no substantial differences between these provisions and those of Senate Bill 20.

The Act makes it unlawful for any investment company, stock broker or any representative thereof to sell securities without first securing a permit from the State Investment Commissioner. The controlling section is 66-2008. This section sets out in detail the information that must be furnished to the Investment Commissioner before securities may be sold. The application shall set out the following information:

1. An itemized statement of its actual financial condition, the amount of its properties and liabilities.
2. A copy of all contracts, bonds or other securities which it proposes to make with or sell to its contributors.
3. Sample copies of all literature or advertising matter used or to be used by such investment company.
4. A copy of its constitution and by-laws or articles of co-partnership or association.
5. If it shall be an incorporated investment company it shall also file a copy of its charter and if it be a foreign investment company such copy shall bear the certificate of the Secretary of State or the State Officer having custody of such record that is a true complete and court copy.
6. If the applicant is a foreign investment company, a certificate by the proper officer of its domicile, state, territory or government not more than thirty days before the filing of such application showing that such applicant is authorized to transact business in such state, territory or government."

The application and all supporting papers must be verified and if the corporation is a foreign one there must accompany the application a consent to the service of process within the State.

What further information could the commissioner want to determine the integrity of the qualifying corporation or partnership than is set forth in these requirements? It would seem the information is complete and, in addition of course, the procedure

for filing the information is simple and any country lawyer or even a layman can prepare the application.

Not only does the present act require an application setting out in detail the condition of the applicant, but section 66-2011 grants to the commissioner the power to make or have made a detailed examination audit or investigation of the applicant investment company's affairs. He must be satisfied before issuing a permit that the proposed plan of business of the qualifying corporation and proposed contracts contain and provide for fair, just and equitable plan for the transaction of business and that its promotion expense shall not be greater than twenty-five per centum of the sale price of its securities, "and in his judgment, promises a fair return of the stocks, bonds or other securities by it offered for sale."

This section gives to the commissioner power to revoke any permit on ten days notice.

The present law section 66-2012 allows licensed stock brokers to sell stocks, bonds or securities that the broker handles without qualifying each security separately, but it does require that the investment commissioner make an investigation of the broker as to his integrity and so forth.

The Act provides that licensed investment companies and stock brokers must file an annual statement showing financial condition, property, liabilities etc.

Section 66-2018 gives the investment commissioner all the powers of the state bank examiner in examining at any time the books, records and affairs of investment companies and stock brokers and section 66-2020 allows revocation of permits and appointments of receivers where the investment commissioner after examination of the books of the company decides that its assets do not equal its liabilities or that it is conducting its business in an unsafe, inequitable or unauthorized manner or is jeopardizing

the interests of its stock holders or the investors in its stocks, bonds etc. of the company.

The penalties for violation of the law are extremely severe. Much more so than Senate Bill 20. Section 66-2023 carries amandatory prison term of not less than one year in addition to a fine upon conviction of making false entries or statements in connection with the application for a permit to do business as an investment company or for false entries in the books of the company. Any other violation of the act is a felony punishable by a fine and or prison sentence.

Thus it will be seen that, under our present Blue Sky law, securities except for those specifically exempted in the present law and in proposed Senate Bill 20, may not be sold in Montana until there is registration with the investment commission and a license issued. It will be seen that the commissioner has the broadest possible powers under the present act to require full disclosure by the issuing company. There is no limitation upon his power to audit and examine the books and records of corporations, stock brokers and agents. Examination of the present Act shows that the commissioner has the power to enjoin the sale of securities and, finally, it will be seen that the present Act provides most severe criminal penalties for the perpetration of fraud upon the investing public.

It, thus, would seem very clear that the present Blue Sky law is sufficient to meet any problem which may arise in the sale of stocks or securities of Montana corporations within Montana to protect the public against fraud or overreaching on the part of investment companies, corporations, stock brokers and stock salesmen. That this is true is borne out by the fact that my information is that there has not been a single criminal complaint filed under this blue sky law for the last seven years. There have been complaints, I am sure, of investors who have been

unhappy with their investments. That is, the stocks which they have purchased have not made the profit they anticipated or else they have not made any profit at all, but filing under S. E. C. regulations would not change that situation.

It would, thus, seem on balance that the legislature should not by the enactment of Senate Bill 20 so complicate qualification of stocks for sale in Montana as to actually discourage new Montana enterprises. In my opinion the enactment of Senate Bill 20 would completely Federalize our securities act and bring all sales of securities of Montana corporations under Federal law. That, of course, is the real purpose of Senate Bill 20. A similar Bill was proposed in the 1959 session and was defeated. The principal witness in its support was an employee of the securities and exchange commission. The Bill was drafted by him. The same is true of present Senate Bill 20.

I will not attempt any detailed analysis of Senate Bill 20. However, I would like to make a few comments on it.

Proponents of the Bill in the Senate urged its enactment on the grounds that it was a uniform act. This is not the case. Some changes have been made in the Blue Sky laws of other states in the west but none of them have adopted a Bill similar to Senate Bill 20 and it is not a uniform Act.

I have given many hours of study to Senate Bill 20 and I still cannot understand many of its provisions. I am sure that there are members of this committee that have studied it also and have come to the same conclusion. I believe the committee is being asked to buy a 'pig in a poke' with no reasonable certainty as to how the proposed Act would apply.

It is this ambiguity, particularly in section 10, that prompts me to assert that if Senate Bill 20 becomes a law, every security and every company will have to qualify under every securities and Exchange regulation. The ambiguities in section 10, coupled with the provisions of section 12 and 22 would make the risk attendant upon the qualification of securities of Montana

corporations without going through S. E. C. simply unbearable. For example, under Section 12, the registration statement may be suspended or revoked if, after its issuance it is discovered that this statement is incomplete in any material respect, the commissioner being the sole judge as to the deficiency.

Not only that, but there are most severe criminal and civil liabilities attached to the failure to make a complete statement. For example section 22 has this language,

"Any person who offers or sells a security in violation of sections 7 through 10, or offers or sells a security by means of any untrue statement of a material fact necessary in order to make the statements made in the light of the circumstances under which they are made not misleading (the buyer not knowing of the untruth or omission) and he does not sustain the burden of proof that he did not know and in the exercise of reasonable care could not have known of the untruth or omission is liable to the person buying the security from him, who may sue to recover the consideration paid for the security, together with interest at 6% per annum from the date of payment, costs and reasonable attorney's fees, less the amount of any income received on the security, upon the tender of the security or for damages if he no longer owns the security."

In my opinion, this would make the issuer or seller of any security an insurer. The definition of what is misleading and untrue are so hazy that no issuer or seller of a security registered under section 10 could possibly feel safe in issuing or selling such securities. Section 22 shifts the burden of proof to the issuer or seller of the securities. This provision alone, in my opinion, would put an end to the formation of new corporations in Montana and to the distribution of their stock. The only exceptions would be new corporations of such size that they could qualify under the Securities and Exchange Act.

There are many other features of Senate Bill 20 that, in my opinion, are objectionable. They would include the fact that the Act sets up another new Agency, another new Bureau, that the investment commissioner is given practically unlimited powers of making and changing rules and would contemplate under section 24 a measure of domination by the Securities and Exchange Commission over the investment commissioner.

I respectfully submit that there is no need for any substantial change in our present Blue Sky Law, that Senate Bill 20 would most adversely affect the business growth of this State and that the provisions of the Act are so ambiguous, uncertain and tenuous that it would tend to discourage the sale and purchase of the securities of any Montana corporation no matter how registered and qualified. I trust that, when the committee reports on Senate Bill 20, that their report will be adverse.

Don't say it

Wb. your Committee on.....Judiciary

Having had under consideration..... ~~am to~~ Bill No.....

Bill No. 178, Laws of Louisiana, 1937, as amended by Section 3, Chapter 178, Laws of Louisiana, 1937; Sections 66-2008 through 66-2017; Section 66-2018, as amended by Section 4, Chapter 178, Laws of Louisiana, 1937; Sections 66-2019 through 66-2022; Section 66-2023, as amended by Section 5, Chapter 178, Laws of Louisiana, 1937; Section 66-2024, as amended by Section 6, Chapter 178, Laws of Louisiana, 1937; Sections 66-2025 and 66-2026, Revised Statutes of Louisiana, 1947, and all acts and parts of acts in conflict herewith.

and sec. 6 - Minnesota. 2- Page 4- Line 8 after the word, "calculated,"
adding the words "acting as agents for an issuer or issuers of
securities for a broker-dealer in the sale of securities for an
issuer."

Line 29

1.12 - Subsec. 1-1-Page 21 by striking the word "tended".

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Page 29 line 14

by striking the word, "officer," and
insert the word "offerer".

Line 2 Page 35.

22-~~1~~ by inserting after the word, fact, "or official
material fact".

Page 35.

Sec. 22-Sub-Sec. 3 - Line 29 by inserting the following sentence
the word, judgment. "A cause of action under this statute surviv-
eth of any person who might have been a plaintiff or a defendant.

Line 7 to 17-

Sec. 26 - Page 40 of original bill by striking the whole thereof
inserting in lieu thereof the following:

26. All effective permits issued under prior law relating to the
of any security and all conditions imposed upon such permits shall
in effect so long as they would have remained in effect had they
effective under this act subject, however, to the payment on
ber 1, 1961 by the issuer of such securities of a renewal
ration fee required by Section 16 of this act. All stock-brokers
lesmen registered under prior law on the effective date of this
all be deemed duly registered under and subject to the
ions of this act, such registration to expire on March 1, 1962
be subject to renewal as provided in this act."

as so amended

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Chairman

February 22, 1961

JUDICIARY COMMITTEE

Meeting of the House Judiciary Committee was held at 8 a.m. on Wednesday, February 22nd, 1961. Chairman Haughey presided.

Upon roll call all members were present except Stimatz, Bush, Lucas, Murray and Jensen, Mineral.

Hearing on Senate Bill No. 20 was conducted. Mr. Spahr D-Cascade, was the first to speak. I think instead of weakening the law, but strengthening it, I have to bring some things to the attention of the committee. By this bill licenses would be \$20.00 and maybe more, and I think we are way out of line already with North Dakota, Washington and Wyoming with our present license fees. I think there should be another section or it should be included in Section 12 that the company must make a full disclosure of facts. Also, I think the word "financial" should be added preceeding the word "advisor" wherever it appears. Prudential Diversified says they are earning 6½%, and they should be made to show that they are actually earning such. I don't want the State Auditor to be the State Investment Commissioner. It should be an entirely separate office.

Proponents of the bill appeared at this time. First to speak was Mr. Harry Jones, representing the Montana Investment Department. Senate Bill No. 20 is a good bill. We drew the bill up from the Washington Act. We asked Mr. Newton to come to Helena to appear before the committee to assist us. There are approximately 35 licensed stockholders in Montana and approximately 175 investment companies, under the present Blue Sky Law. We also have 950 licensed securities salesmen. The bill was necessary in view of the increased stock activities in Montana. The state would benefit through possible increase of revenue.

Next to speak for the proponents was Mr. James Newton, Investment Administrator of the U.S. Securities Commission in Montana. I have been with this department for the past 25 years in the Seattle area. My interest in this bill is because of the violations in Montana. A larger part of the thievery taking place is because of inactive Montana law. It is a business requiring both state and federal governing. There have been some amendments suggested which I will submit at this date. These amendments are in Section 6-2, Section 4-5, Section 13 and Section 14. It is our belief that the amendments are an improvement and that Senate Bill No. 20 be amended accordingly. In 1957 some amendments were adopted to the State Securities Law. The bill presently before us is a complete overhauling. This bill is basically the enforcement act approved by the American Bar Association and of course, the industry corporation. Fortunately, however, this committee

is not dependent about what the American Bar Association happens to think or industry happens to think. I do know that it is regarded by members of the Bar and the investments as having been successful. Alaska has a very similar bill. The bill drafted by the Alaska legislature will be practically identical as this bill. We are very fortunate to have had Washington see this bill in actual practice for the last year and a half. There hasn't been a community in Montana that hasn't been hit by these professionals. These are cases which we have actually had in our office. When a good securities act is enacted there is a cry, this is going to hurt financing in this particular state. A strong Blue Sky Law believe me, will hurt.

This bill was drawn primarily to give the Securities Commissioner an effective bill to regulate the sale of securities and to make practical means of compliance. For a small company to make a small offering, it is a real chore. There is no benefit to the small company, they have to duplicate their efforts. Under the Securities law we have what we call a small offering exemption. Lets assume that this small Montana company wants to make \$150,000. Under this law there is no duplication of effort. Washington adopted this law in 1959 and it has worked so well I think other states are going to do the same thing. The people of Montana have to fear the itinerant professional. All they want to do is sell and get the heck out of here. A salesman who is going to sell these new deals is going to have to live in Montana at least a year. Under the present law it provides the Investment Commissioner should be the one to be fair and equitable. This bill is much more realistic. It provides that the investment commissioner is able to deny as it is fraudulent. If a person is convicted who has a prior record a prison sentence of at least one year is mandatory. The fees have been put on a more logical basis. The fees are now based upon the amount of stock being sold. Of course, that is the way it should be.

Next to speak as a proponent was Dean Robert Sullivan, Dean of the Law School at Montana State University. I am here speaking only for myself, not for the other Commissioner Harrison and Alex Blewett. If this bill is enacted it will curb the difficulties Mr. Newton pointed out.

Mr. Hodges, of Piper, Jaffray and Hopwood in Great Falls, appeared as a proponent. I am here representing the securities industry and we are glad to see a bill in here to protect the investor. This bill is very good and very well needed. We have been the play for the first buck artist.

First to speak for the opponents was Mr. Leif Erickson, Attorney at Helena, Montana. I think this bill makes it more difficult for legitimate enterprise. My basic opposition to this bill is it is a bill to regulate. Jurisdiction is taken from Montana entirely. Section 10 of the act sets up such ambiguous rules. Copy of remainder of speech is attached to these minutes.

Mr. Robert H. Nelson, registered Montana Engineer and a Consulting Geologist and Private Investor, was the next opponent to speak. I am interested that this bill will effectively throttle not only the criminal but the free enterprise. I believe that full disclosure was the original purpose of the act. In other words, this bill gives the commissioner unrelated power to pass on the advice or the propriety of an investment. I don't think that you could have one commissioner who could tell who is just, etc. I think it draws a stumbling block

not only in Montana, but if enacted throughout the country.

Mr. Norman J. Holter, spoke next as an opponent. Copy of speech is attached to these minutes.

Mr. Newton spoke on rebuttal. Montana people do not make complaints. The FBI does not investigate your SEC. This bill is designed to circumscribe the power of the commissioner.

Mr. R. B. Richardson, President of Western Life Insurance Company, appearing as neither an opponent or proponent, wished to offer an amendment.

Both Mr. Erickson and Mr. Holter stated that the present law is adequate.

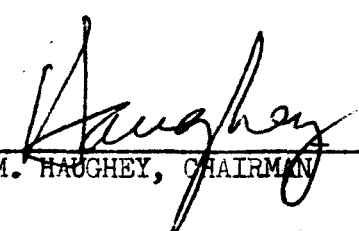
Questions were directed to the speakers.

Motion was made by Bentz and seconded by Lord that Senate Bill No. 20 be postponed. Motion carried.

Senate Bill No. 133 was considered. Conklin moved, seconded by Cеровski, that Senate Bill No. 133 Be Concurred In. Motion carried.

Meeting will be held upon recess of the House today at 1:30 p.m. to study Senate Bill No. 20 further.

Motion was made by Dykstra and seconded by Lord that the meeting be adjourned.



JAMES M. HAUGHEY, CHAIRMAN

February 22, 1961

JUDICIARY COMMITTEE

Meeting of the House Judiciary Committee was held at 1:30 p.m. on Wednesday, February 22, 1961. Chairman Haughey presided.

Upon roll call all members were present except Lord.

Senate Substitute for Senate Bill No. 165 was considered. Motion was made by Stimatz and seconded by Bradford that Senate Substitute for Senate Bill No. 165 Be Concurred In. Motion carried.

Senate Bill No. 148 was considered. Motion was made by Murray and seconded by Dykstra that Senate Bill No. 148 Be Not Concurred In. Substitute motion was made by Blewett and seconded by Keller that Senate Bill No. 148 be passed for the day until authors appear.

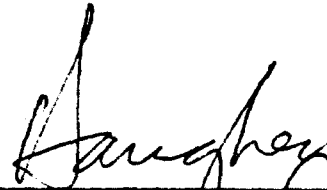
Sub-committee report was given by Mr. Blewett on Senate Bill No. 103. Motion was made by Bradford and seconded by Lucas that Senate Bill No. 103 Be Not Concurred In. Motion carried.

Chairman Haughey appointed Mr. Bradford, Mr. Cerovski and Mr. Stimatz to a sub-committee to further study Senate Bill No. 20.

Senate Joint Memorial No. 3 was considered. Chairman Haughey explained this bill. Motion was made by Keller and seconded by Bush that Senate Joint Memorial No. 3 Be Concurred In. Motion carried. Mr. Conklin was the only descending vote.

Mr. Durkee, D-Hill, spoke at this time on Senate Bill No. 148. Motion was made by Bush and seconded by Bradford that Senate Bill No. 148 Be Concurred In. Motion lost. Bill was passed for the day.

Motion was made by Dykstra and seconded by Blewett that the meeting be adjourned. Meeting adjourned at 2 p.m.


JAMES M. HAUGHEY, CHAIRMAN

Statement by Norman J. Holter
Before The Judiciary Committee of the Montana House of Representatives
February 22, 1961

My name is Norman J. Holter. I live in Helena, Montana where I was born and where I am a property owner and taxpayer. I appreciate the opportunity to appear at this Committee meeting on Senate Bill 20, AN ACT RELATING TO SECURITIES AND CREATING THE OFFICE OF INVESTMENT COMMISSIONER. My purpose is to present reasons, from the viewpoint of a professional investor, as to why an adverse report by your Committee would be in the best interests of the State of Montana.

First a few words on my qualifications to have an opinion on the merits of the bill before you. The primary source of my livelihood for the past fifteen years has been a salary paid me to invest considerable funds belonging to others. My training includes college, paid understudy with successful investors and over twenty-five years of active practical experience. Thus I speak as a professional investment manager with an occupation entailing heavy responsibilities and which is already beset with enough complications without the stifling mechanics of SB 20. In this occupation I have personally founded and helped found numerous corporations, partnerships and other organizations both in and outside the state of Montana. The Montana ventures have made a tangible contribution to our State's economy. Details of my background are omitted to save time but I shall gladly answer any specific questions on my investment career.

My interest in appearing against SB 20 arises from my experience with venture capital in young new companies where this bill would primarily apply. Many or most of those companies where I have played a major part would never have been formed were SB 20 in effect -- not because I object to protecting the gullible and the senile from fraudulent promoters but because SB 20 would also stifle badly needed new legitimate enterprise. I am not appearing on behalf of any company and I ask your indulgence on matters of law where I am on unfamiliar ground.

Should I be in a minority in objecting to SB 20 it might be because there are but few investors in Montana charged with the responsibility of actively encouraging and forming new ventures of the type too unseasoned to go through brokers offices. Brokerage houses no doubt want SB 20 passed so that investment funds will be diverted from new ventures to listed and over-the-counter stocks*and hence increase the commission business. I think new Montana ventures are better for Montana, including its labor force, than buying General Motors through a broker. My ancestors and I have been helping to build Montana for over a century and I hope this activity will be allowed to continue.

Next I ask what I think is the important question of whether SB 20 is needed at all even if its objectional features were not present. If the purpose of SB 20 is to prevent or punish fraud, I ask how many fraud complaints or bond forfeitures have occurred in past years in Montana which require the repeal of so much of present law and the substitution of the burdensome red tape of SB 20. It appears there

*Such stocks are exempt from sections 7 through 12 of SB 20 (p. 29 parg. 8)

have been none in at least seven years. If securities fraud has been widespread then SB 20 is either an indictment of our law enforcement agencies or is a monument to the gullible who don't even file complaints when defrauded. Our present laws are mighty tough and will suffice if complaints are made and the law enforced. I have heard arguments that SB 20 is desirable because of present red tape and confusion but I hardly think that the substitution of new red tape for old is going to change this. Therefore I say that SB 20 is not needed.

I want to especially discuss the tangible harm which I feel would ensue if the provisions of SB 20 become law. Speaking generally, this bill would not only increase the expense of state government but would also decrease the income to the State of Montana by discouraging new legitimate ventures. Thus I feel it is a double failure insofar as it relates to Governor Nutter's program of balancing the budget.

By way of specific objections I will first mention those which taken together would act, in my opinion, as a great deterrent to new legitimate Montana enterprise. I for one would not form a company or become an officer or director thereof were section 22, page 39, paragraph 2 in effect where, if there is an omission to state a material fact, the burden of proof of non-violation is on the individual (page 40 line 25). This makes one guilty until proven innocent and it is easy to unintentionally omit a material fact even when fraud is not involved. Negative knowledge is impossible to prove anyway yet this section, which in effect requires a guarantee by any partner, officer or director that a stock is going to be a successful investment would subject everyone in sight to lawsuit at the whim of any disgruntled investor. This section should mark the prompt end of any new Montana ventures since no responsible person is going to guarantee honesty of a salesman who might be a secret crook employed by a legitimate enterprise. (Yet should the Commissioner use confidential information for his personal benefit no penalties are mentioned (page 43 parg. 3).)

Another serious item which would work to discourage new ventures is the extensive red tape and delays which would be involved. These are not merely an inconvenience but would make it impossible to employ and keep capable executives or technical personnel in the formative stages when the existence of the company might depend on the whims of the Commissioner. The long periods of doubts and delays caused by the SB 20 red tape would make it impractical to start organizing unofficially the important nucleus of people and ideas upon which to build when approval was obtained. The following examples are petty in themselves but the principal is not and the sheer magnitude of such red tape could easily be the added straw needed to discourage the whole idea of a new venture. One such example is the requirement that the order of priority in which cash proceeds will be used must be shown (page 21 line 57). The Commissioner might as well step in and manage the company in its day to day decisions as it is impossible to know the order of receipt of accounts payable. Also once registration is approved why should it be necessary to report the progress of the offering (page 25 line 48)? What has this to do with fraud prevention? This and similar things smack of bureaucratic empire building.

Another item to discourage new ventures is the vast discretionary powers given the Commissioner. With the ground rules subject to change one would always have a Sword of Damocles over his head and it would be easier to just skip it. A few of many examples are allowing the commissioner to arbitrarily omit any item of informa-

tion from a registration statement (page 24 line 9); the power of the commissioner to enter a stop-order without notice or hearing (page 18 line 62); the power of the commissioner to summarily postpone or suspend registration (page 12 line 121); the power of the commissioner to designate or rule which persons shall come under the regulations of paragraph 5 of section 4 (page 4 line 58); the power of the commissioner to revoke registration if in his judgment such action is in the public interest; the power of the commissioner to deny or revoke certain exemptions of section 14 (page 33 line 74); the requirement of an irrevocable consent making the commissioner the attorney of the applicant to receive service in civil actions (page 34 line 5 of section 15); the discretion given the commissioner to conduct investigations either publicly or privately and the discretion to require oath or not (page 36 section 19); the requirement that one must testify regardless of any plea of self incrimination — I am not a lawyer but this sounds too broad and possibly unconstitutional.

then there is
The excessive powers under section 22 have been mentioned earlier; the provision that no person acquiring securities can waive compliance with SB 20; the findings of the commissioner are conclusive, short of appeal if supported by creditable evidence but it is not stated whose opinion is used to establish creditability; the power of the commissioner to make, amend, and rescind rules in his discretion (page 42 line 4); the power of the commissioner to fix travel expenses and living allowances, any other law to the contrary notwithstanding (page 43 line 40), etc., etc. I for one would not attempt any new business under such broad capricious powerful and arbitrary rules.

The additional expense caused by the red tape of SB 20 would be enough to prevent the birth of enterprise in the very small brackets.

Other objections, not so clearly related to stifling new business, are as follows:

SB 20 proposes to create a type of law which is very likely to be changed in connection with the Federal S.E.C. Dean James M. Landis, one of the authors of the S.E.C. Act, and former Commission Chairman, made a report last month at the request of President Kennedy recommending sweeping changes to make the S.E.C. more effective and more in accord with original legislative intent. To save time, I have appended a photostat of this important report with the most essential aspects underlined in red. I shall quote one statement in particular in regard to the tendency of these commissioners.

"This is to move away from the legislative standards of full disclosure to a judgment on the quality of the securities being registered. The history of state security regulation in this respect gives ample evidence of the undesirability of establishing a bureaucracy with powers of this nature. True, there is every temptation to move in this direction as one views as a whole the rapacity of promoters and underwriters and the unwillingness of a greedy and speculative public to try to understand the simplest facts of corporate finance. But control and supervision over the activities of the selling group and the marginal fringe of brokers and dealers making markets in these issues, can do more to dampen this type of financial piracy than the use of the registration powers for purposes for which it was not intended."

I urge you to study the brief Landis report before you recommend the adoption of

a set of laws which are very likely to soon be obsolete in Washington -- this would be an embarrassing example of putting Montana behind the times. If new law is needed, let it wait until after the S.E.C. reorganization.

Nothing is said about the qualifications of the investment commissioner. I believe that few, if any Montana attorneys have ever handled an SEC underwriting and such experience should surely be a minimum qualification to say nothing of the need for wide investment experience on the part of the commissioner.

The temptation to commit unethical acts on the part of the commissioner will be great since he can permit the omission of any information of any registration statement (page 24 line 9), can investigate whatever he wants to at the investigatees expense and at rates set by the commissioner (page 42 para. 2), and he has many other unnecessarily vague and discretionary powers.

Why are many sections of the bill not applicable to an executor, administrator or guardian? (Page 31 line 26). Such individuals are often under great pressure to unload bad stock on others and they have just as much right to be crooked as do fraudulent promoters. I question the wisdom of passing SB 20 with the grandfather clause exempting present situations in which large unsold backlogs of securities exist. New ventures would thus be in a bad competitive position when trying to sell stock when other companies, not covered by SB 20, were also trying to sell stock.

The bill is very vague in defining what is meant by an investment advisor. What about Montana companies where funds are raised and investment decisions are then made by a massive board of directors? Are each of them an investment advisor? What if a director votes for an investment and it turns out to be bad or he votes against an investment and it turns out to be good? Is the president of a corporation an investment advisor if he puts some of the company's surplus funds into common stock (none of this is considered in SB 20)?

Who is to do the work of the State Auditor while he is acting as Investment Commissioner?

I suspect that the bill is inconsistent by its failure to include legislative standards of procedure for the promulgation of rules and regulations and their administration.

In closing I can say that it matters little to me as an individual one way or the other since opportunities abound outside of Montana and I have had considerable experience in forming non-Montana companies. Also attached to the report is a recent news release describing a new organization which I helped to form. Whether others feel the same way or not I for one would take no part in creating such new enterprise if SB 20 becomes law in its present form. I don't think this bill is needed, I don't think it will cure any of the present ills in this department, and I am positive that it would discourage both local and out-of-state capital from creating new enterprise here.

Thank you for listening.

Norman J. Holter

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debt in these matters should be respected by the Congress unless he is palpably wrong.

Blueprints as to further reorganization of the various agencies cannot be submitted at this time. But certain ideas as to what the outlines of each reorganization should generally be can be suggested. These can best be set forth by a brief examination of some of the major regulatory agencies.

3. *The Securities and Exchange Commission*

The problems of the Securities and Exchange Commission are relatively simple. Much of the delays that characterize its operation stem from the fact that it, more than any other agency, has been starved for appropriations. Even the recent increases have not restored the amounts formerly available. What has been responsible for this attitude other than pure ignorance as to the significance of its functions is difficult to fathom. But more than increasing its appropriations is necessary.

Much of the delay that attends the registration of securities could be eliminated by providing for simpler forms of registration and a simplified supervision of the process of registration with respect to seasoned securities, bonds and debentures with an A or B rating and preferred stocks that for a past period have shown an appropriate ratio of earnings to dividends payable on such stocks. In the case of seasoned securities of this nature, the issuer and underwriter should be relied on to furnish full and accurate statements of fact and deficiency letters could be substantially abolished. It could also relieve from registration requirements certain admittedly technical public offerings for which registration is now technically necessary. The necessity for maintaining a currently effective registration statement on convertible securities, options and warrants, when an adequate market exists for the basic securities and adequate information is available in annual financial reports or proxy statements, is an example of a situation where registration is unnecessary. The issuance of restricted options to groups of employees not too excessive in number is another such example. More of them can be found. Relieving the Commission and the industry of the necessity for acting on registration statements in such

situations would clear the Commission's docket to some degree and relieve the industry of unnecessary costs.

The deficiency letter, a most valuable extra-legal development, has a real place with regard to the more promotional and speculative securities. There has grown up over the years a considerable tendency to indulge in lint-picking in these letters, resulting in delays and unnecessary costs. Another tendency has become noticeable due to the attitude of certain Commissioners shortly following World War II. This is to move away from the legislative standards of full disclosure to a judgment on the quality of the securities being registered. The history of state security regulation in this respect gives ample evidence of the undesirability of establishing a bureaucracy with powers of this nature. True, there is every temptation to move in this direction as one views as a whole the rapacity of promoters and underwriters and the unwillingness of a greedy and speculative public to try to understand the simplest facts of corporate finance. But control and supervision over the activities of the selling group and the marginal fringe of brokers and dealers making markets in these issues, can do more to dampen this type of financial piracy than the use of the registration powers for purposes for which it was not intended.

Similarly controls should be extended more widely as against so-called investment advisers, many of whom have morals not exceeding those of tipsters at the race track. Even our conservative newspapers carry horrendous advertisements as to the prowess of particular advisers and the aura that these advisers have engendered has led to imitation of their tactics by large and respectable brokerage houses. Here is a field that the Securities and Exchange Commission is beginning to plough and money made available for such a purpose will pay ample dividends in turning savings away from rank speculation to reasonable investment.

One serious feature of delay on the part of the Securities and Exchange Commission lies in the issuance of regulations and forms. Important regulations have been delayed for years. Some reason for this delay lies in the inherent complexities of the problems and the commendable practice of the Securities and Exchange Commission, so different from that of the Federal Aviation Agency, of affording opportunities to the industry to

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comment on proposed regulations. But an element of delay arises from the incapacity of the Commissioners themselves to grasp the essence of these problems and the significance of their resolution to the financial community. Because of the excellence of its staff and the inherent complexities of the problems, the Commission in a sense is the captive of its staff. It appears to be incapable at times of resolving differences within the staff and the resultant inaction makes for delay. The recent confirmed appointment of a career employee as a Commissioner may provide some remedy for this situation. But it points up the absolute necessity for having qualified individuals as members of the Commission.

Rapidity of decision in many matters is more important in the Securities and Exchange Commission than in most of the other regulatory agencies. The failure to get a decision or delay in making a decision is in itself defeat in many cases. Delegation thus becomes essential. Too little of this characterizes the work of the Commission and, when it does exist, the line of delegation is not clear. Decisions, important decisions, are made by subordinates at fairly low levels and, because of time pressures of such importance to the business of financing, their decisions have to be accepted. On the other hand, in such simple matters as the acceleration of the effective date of registration statements decision is not delegated and unnecessary time is consumed by the Commission in dealing with a problem that in nine out of ten cases is simple of solution.

The Securities and Exchange Commission has an opinion writing section whose quality is high, if not the highest among the agencies. Nevertheless, it should be abolished and individual Commissioners held individually responsible for the enunciation of the grounds upon which conclusions of the Commission are stated to rest. If the numerous speeches and articles of the various Commissioners are a test of their capacity for articulation, this should not be an impossible task.

The extension of the Commission's power of forcing appropriate disclosures with respect to securities in the over-the-counter market—an extension long urged by the Commission—is a matter for legislative action. As an ideal it has basic merit, particularly with respect to categories of securities, such as bank and insurance stocks, which have traditionally refrained from listing on the

stock exchanges. As a practical matter, certain restraining lines have to be drawn, perhaps tighter than those presently suggested by the Commission.

From the standpoint of the formal Presidential action needed with respect to the Securities and Exchange Commission, the only thing required is further strengthening the powers granted to the Chairman in 1950 to the full extent heretofore suggested for the Interstate Commerce Commission and the implementation of its powers to delegate adjudicatory matters to hearing examiners and employees.

SUMMARY AND CONCLUSIONS

A number of suggestions with reference to improving the organization and procedures of certain of the regulatory agencies are contained in the above report. Many of these recommendations can be adopted, if deemed desirable, by action of the agencies themselves; others can be incorporated in the plans for reorganization to be prepared as suggested below and are therefore not repeated in this summary.

But there are certain matters that need immediate attention, such as administrative delays and the lack of policy formulation both within an agency and among various agencies. An answer that can be made to the co-ordination of inter-agency activities is the consolidation of their various functions within a new Department. Such an answer may eventually be the right answer to many of the situations herein detailed. It was the answer made in 1953 by the creation in the Department of Health, Education and Welfare and the consolidation within it of functions formerly widely dispersed. But the beginnings of that project go back thirty years to a recommendation by President Harding in 1923. The present needs are too pressing to await the initiation of what would be a mammoth project of consolidation in the fields of transportation, communication, and energy, and even a huge project in any one of them. The prime and immediate need in these fields is for developing and coordinating policy immediately at a high staff level. Operations for the moment can be left to the existing agencies, whose conduct should in the light of these recommendations show marked improvements. If experience later would dictate the desirability of the consolidation of certain operating functions, they will then have

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become sufficiently identified and understood to enable their intelligent consolidation in an appropriate departmental structure. To attempt such consolidation in the absence of the experience that would be derived from determined effort to evolve policy through coordination directly under the President, would be substantially to plan *in vacuo*. The creation of a mechanism for staff coordination can and should begin now. Its staff work as envisaged herein will carry within itself means for the implementation of its directives.

With this thought in mind, the following recommendations are made:

1. Secure for the President from the Congress the right to propose reorganization plans pursuant to powers heretofore granted the President under the Reorganization Act of 1949, subject to veto by a concurrent resolution of both Houses of the Congress. The powers to propose plans should be available for a minimum of two years but preferably for four years.

2. Propose a reorganization plan for the Interstate Commerce Commission whereby its Chairman will be designated by the President and serve as Chairman at his pleasure.

3. Propose a reorganization plan for the Federal Power Commission making clear that the tenure of its Chairman is at the pleasure of the President.

4. Propose reorganization plans for the Interstate Commerce Commission, the Civil Aeronautics Board, the Federal Communications Commission, the Federal Power Commission, the National Labor Relations Board, the Federal Trade Commission, and the Securities and Exchange Commission which will make clear that the Chairman's authority extends to all administrative matters within the agency, including responsibility for the preparation and review of its budget estimates, the distribution of appropriated funds according to major programs and purposes, and the appointment of all personnel, except (i) those whose appointment is by statute vested in the President, (ii) division heads whose appointment must be confirmed by a majority of the agency members, (iii) special assistants, not in excess of three, to each of the members, which appointments shall be made by the respective members.

5. Propose reorganization plans for the same agencies providing for the delegation

to panels of agency members, single agency members, hearing examiners or boards of employees for final determination all adjudicatory matters subject only to discretionary review by the agency *en banc* on petition by a party in interest.

6. Create within the Executive Office of the President with appropriate powers an office for the Coordination and Development of Transportation Policy to develop and implement a national transportation policy. This should be accomplished by a reorganization plan transferring to this Office all the responsibilities now vested in the Undersecretary of Commerce for Transportation.

7. Create within the Executive Office of the President with appropriate powers an Office for the Coordination and Development of Communications Policy and simultaneously by executive order transfer to this Office all powers relating to telecommunications now vested in the Office of Civil and Defense Mobilization.

8. Create within the Executive Office of the President with appropriate powers an Office for the Coordination and Development of Energy Policy with authority to propose to the President plans for the development of the energy resources of this nation.

9. Create within the Executive Office of the President with appropriate powers an Office for the Oversight of Regulatory Agencies which will assist the President in discharging his responsibility of assuring the efficient execution of those laws that these agencies administer.

10. Abolish the present President's Advisory Committee on Government Organization.

11. Abolish the positions of such Special Assistants to the President who have heretofore had as their major concern matters within the purview of the Offices to be created under recommendations 6, 7, 8 and 9.

12. The offices mentioned in recommendations 6, 7, 8 and 9 can be substituted for the Office for Emergency Management, which in its present form can be abolished.

13. Impose upon the Office for the Oversight of Regulatory Agencies the duty to prepare for the President detailed reorganization plans for the regulatory agencies with prime emphasis on the Federal Power

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February 23, 1961

JUDICIARY COMMITTEE

Meeting of the House Judiciary Committee was held at 7:30 a.m. on Thursday, February 23, 1961. Chairman Haughey presided.

Upon roll call all members were present except Murray.

Senate Bill No. 167 was considered. Mr. Blewett gave his sub-committee report on this bill. Motion was made by Blewett and seconded by Bradford that Senate Bill No. 167 be amended and As So Amended Be Concurred In. Motion carried.

Senate Bill No. 195 was taken up. Mr. Don Skerritt, representing Montana Sheriff's & Peace Officer's Association spoke. We have been plagued with sex offenses in Bozeman. This is sort of a deviate act. This gives us a chance to put our finger on them when they come into the county. In most cases they are people who have been in prison prior. I don't know whether it will even work yet, but we would like to try it. We are after the lewd and lascivious acts against a child. Questions were directed to the speaker by the committee members.

Motion was made by Dykstra and seconded by Bradford that Senate Bill No. 195 Be Concurred In. Motion Lost. Motion was made by Conklin and seconded by Lord that Senate Bill No. 195 be placed in a sub-committee. Motion carried.

Senate Bill No. 20 was considered. Sub-committee report was given by Mr. Stimatz. After explanation of the proposed amendments Bradford moved, seconded by Stimatz that the amendments be adopted. Motion carried.

Jensen of Lake moved, seconded by Keller that Senate Bill No. 20 As Amended Be Concurred In. Motion carried.

Senate Bill No. 90 was considered. Justice Wesley Castles appeared for Senate Bill No. 90. This bill was put in at the request of the Judges Association. At the meeting last fall Judge Derry of Billings suggested such a bill and the judges unanimously agreed to request this bill be introduced this session. There are two district judges in the state who have expressed interest against the bill. The purpose of the bill is to provide for departmentalization in the three judge districts. Questions were directed to Judge Castles. Motion was made by Keller and seconded by Bentz that Senate Bill No. 90 Be Concurred In. Motion carried.

“(d) It shall be unlawful for any person to have in his possession or under his control, more than one (1) Montana operator’s or chauffeur’s license at any one time.”

Unlawful to possess more than one license.

Section 2. Repealing all acts and parts of acts in conflict herewith.

Repealing clause.

Approved March 16, 1961.

CHAPTER 250

An Act to Increase by Three Per Cent (3%), for the Two-Year Period Beginning July 1, 1961 and Ending June 30, 1963, the Foundation Program Schedules Provided in Section 75-3612, Revised Codes of Montana, 1947, as Amended by Chapter 267, Laws of 1959.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. For the two-year period beginning July 1, 1961 and ending June 30, 1963, the foundation program schedules provided in section 75-3612, Revised Codes of Montana, 1947, as amended by chapter 267, laws of 1959, shall be increased by the amount of three per cent (3%).

3% increase—
foundation
program
schedules.

Section 2. The foundation program schedules so increased shall be the basis for general fund school budgets adopted by the trustees of all school districts and county high schools in June, 1961, and June, 1962, which budgets shall be applicable to the fiscal years 1961-62 and 1962-63 respectively.

Basis for
general fund
school budgets.

Approved March 15, 1961.

CHAPTER 251

An Act Relating to Securities and Creating the Office of Investment Commissioner; Providing for the Administration of the Act and Prescribing Certain Powers and Duties in Connection Therewith; Providing for the Registration of Securities; Providing for the Registration of Broker-Dealers, Salesmen, and Investment Advisors; Exempting Certain Securities and Security Transactions

From the Provisions of the Act; Providing for Consent to Service of Process; Providing for Registration Fees Under the Act; Providing for Investigations; Providing for Judicial Review of Orders; Defining Terms; Providing Penalties; Providing Effective Date of Act; Repealing Section 66-2001; Section 66-2002, as Amended by Section 1, Chapter 178, Laws of Montana, 1957; Section 66-2003, as Amended by Section 2, Chapter 178, Laws of Montana, 1957, Sections 66-2004 Through 66-2006; Section 66-2007, as Amended by Section 3, Chapter 178, Laws of Montana, 1957; Sections 66-2008 Through 66-2017; Section 66-2018, as Amended by Section 4, Chapter 178, Laws of Montana, 1957; Sections 66-2019 Through 66-2022; Section 66-2023, as Amended by Section 5, Chapter 178, Laws of Montana, 1957; Section 66-2024, as Amended by Section 6, Chapter 178, Laws of Montana, 1957; Sections 66-2025 and 66-2026, Revised Codes of Montana, 1947, and All Acts and Parts of Acts in Conflict Herewith.

Be it enacted by the Legislative Assembly of the State of Montana:

Office of
investment
commissioner
created.

Section 1. **Office of investment commissioner.** The office of the investment commissioner is hereby created, and the state auditor of Montana is hereby made and constituted ex officio investment commissioner.

Title of act.

Section 2. **Short title.** This act may be cited as the "securities act of Montana."

Purpose.

Section 3. **Statutory policy.** This act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

Definitions.

Section 4. **Definitions.** When used in this act, unless the context otherwise requires:

"Commissioner."

(1) "Commissioner" means investment commissioner of this state.

"Salesman."

(2) "Salesman" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but "salesman" does not include an individual who represents an issuer in (a) effecting a transaction in a security exempted by subsections 13 (1), (2), (3), (9), (10), or (11), of this title, (b) effecting transactions exempted by section 14, or (c) effecting transactions with existing em-

ployees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state. A partner, officer, or director of a broker-dealer or issuer is a "salesman" only if he otherwise comes within this definition.

(3) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include (a) a salesman, issuer, bank, savings institution, trust company or insurance company, (b) a person who has no place of business in this state if he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustee, or (c) a person who has no place of business in this state if during any period of twelve (12) consecutive months he does not direct more than fifteen (15) offers to sell or to buy into this state in any manner to persons other than those specified in clause (b). "Broker-dealer."

(4) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends. "Guaranteed."

(5) "Investment adviser" means any person who, for compensation, engages in the business of advising others either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include (a) a bank, savings institution, trust company or insurance company; (b) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession; (c) a broker-dealer; (d) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation; (e) a person whose advice, analyses, or reports relate only to securities exempted by subsection 13 (1) of this title; (f) a person who has no place of business in "Investment adviser."

this state if (i) his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the investment company act of 1940, pension or profit-sharing trust, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during any period of twelve (12) consecutive months he does not direct business communications into this state in any manner to more than five (5) resident clients other than those specified in clause (i); or (g) such other persons not within the intent of this paragraph as the commissioner may by rule or order designate.

“Issuer.”

(6) “Issuer” means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term “issuer” means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

“Non-issuer.”

(7) “Non-issuer” means not directly or indirectly for the benefit of the issuer.

“Person.”

(8) “Person,” for the purpose of this act, means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

“Sale” or “sell.”

(9) “Sale” or “sell” includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. “Offer” or “offer to sell” includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

“Offer” or
“offer to sell.”

Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the pur-

chase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(10) "Securities act of 1933," "securities exchange act of 1934," "public utility holding company act of 1935," and "investment company act of 1940" mean the federal statutes of those names as amended before or after the effective date of this act. Federal statutes defined.

(11) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; pre-organization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a sum of money, either in a lump sum, or periodically for life, or some other specified period. "Security."

(12) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico. "State."

Section 5. **Fraudulent and other prohibited practices.**

(1) It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly Fraudulent and other prohibited practices enumerated.

(a) to employ any device, scheme, or artifice to defraud,

(b) to make any untrue statement of a material fact

Fraudulent and
other prohibited
practices
enumerated—
(cont'd.)

or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or

(c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

(2) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analysis or reports or otherwise,

(a) to employ any device, scheme, or artifice to defraud the other person, or

(b) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

(3) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides:

(a) that the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(b) that no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(c) that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change. Clause (a) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in clause (b), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to re-

sult from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

Fraudulent and other prohibited practices enumerated—
(cont'd.)

Section 6. Registration of broker-dealers, salesmen, and investment advisers.

(1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under section 14, unless he is registered under this act. It is unlawful for any person to transact business in this state as an investment adviser unless (1) he is so registered under this act, or (2) he is registered as a broker-dealer under this act, or (3) his only clients in this state are investment companies as defined in the investment company act of 1940 or insurance companies.

Registration of broker-dealer or salesman required.

(2) A broker-dealer, salesman, acting as agents for an issuer or issuers or acting as agents for a broker-dealer in the sale of securities for an issuer or issuers or investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner shall prescribe and payment of the fee prescribed in section 16. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least one (1) year next prior to the date of application for registration. Salesmen shall also file with the commissioner a bond of a surety company duly authorized to transact business in this state. Said bond to be in the sum of five thousand dollars (\$5,000.00), payable to the State of Montana, and conditioned upon the faithful compliance with the provisions of this act, and shall provide that upon failure to so comply the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

Qualifications.

(3) The application shall contain whatever information the commissioner requires.

Information.

(4) If no denial order is in effect and no proceeding is pending under subdivision (8) of this section, registra-

Registration effective when.

tion becomes effective at noon of the thirtieth (30th) day after an application is filed. The commissioner may specify an earlier effective date and he may by order defer the effective date for an additional sixty (60) days; the effective day after the filing of any amendment shall be noon of the thirtieth (30th) day thereafter unless otherwise accelerated by the commissioner.

Termination.

(5) Registration of a broker-dealer, salesman or investment adviser shall be effective until the first (1st) day of March next following such registration and may be renewed as hereinafter provided. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

Renewal.

(6) Registration of a broker-dealer, salesman or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ninety (90) days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

**Records must
be kept.**

(7) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under section 13 (1), as may be prescribed by the commissioner. All records so required shall be preserved for three (3) years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special or other examinations, within or without this state, by representatives of the commissioner, as the commissioner

deems necessary or appropriate in the public interest or for the protection of investors.

(8) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

Commissioner
may order denial,
suspension or
revocation of
registration.

(a) has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has wilfully violated or wilfully failed to comply with any provision of this act or a predecessor act or any rule or order under this act or a predecessor act;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past five (5) years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesman, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the securities exchange act of 1934, or is the subject of a United States post office fraud order; but (a) the commissioner may not institute a revocation or suspension proceeding under this clause more than one (1) year from the date

of the order relied on, and (b) he may not enter any order under this clause on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this clause without a finding of insolvency as to the broker-dealer or investment adviser; or

(i) has not complied with a condition imposed by the commissioner under subdivision (8) of this section, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected. The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

Notice.

Hearing may
be requested.

(9) Upon the entry of the order under subdivision (8) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within fifteen (15) days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within fifteen (15) days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify or vacate the order.

Commissioner
may order
cancellation.

(10) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser or salesman, or is subject to an adjudication of

mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application.

Section 7. **Registration of securities.** It is unlawful for any person to offer to sell any security in this state, except securities exempt under section 13 or when sold in transactions exempt under section 14, unless such security is registered by notification, coordination, or qualification under this act.

Registration
of securities
required.

Section 8. **Registration by notification.** (1) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under this act:

Registration by
notification.

(a) any security whose issuer and any predecessors have been in continuous operation for at least five (5) years if:

(1) there has been no default during the current fiscal year or within the three (3) preceding fiscal years in the payment of principal, interest, or dividends on any security of the issuer (or any predecessor) with a fixed maturity or a fixed interest or dividend provision; and

(2) the issuer and any predecessors during the past three (3) fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision and which (i) equal at least five percent (5%) of the amount of securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed (as measured by the maximum offering price or the market price on a day selected by the registrant within thirty (30) days before the date of filing the registration statement, whichever is higher, or if there is neither a readily determinable market price nor an offering price, book value on a day selected by the registrant within ninety (90) days of the date of filing the registration statement), or (ii) if the issuer and any predecessors have not had any securities without a fixed maturity or a fixed interest or dividend provision outstanding for three (3) full fiscal years, equal at least five percent (5%) of the amount (as measured by

the maximum public offering price) of such securities which will be outstanding if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;

(b) any security (other than a certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease) registered for non-issuer distribution of any security of the same class has ever been registered under this act or a predecessor act, or the security being registered was originally issued pursuant to an exemption under this act or a predecessor act.

Statement,
documents
and fee.

(2) A registration statement by notification shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 16:

(a) A statement demonstrating eligibility for registration by notification.

(b) With respect to the issuer: its name, address, and form of organization; the state (or foreign jurisdiction) and the date of its organization; and the general character and location of its business.

(c) A description of the securities being registered.

(d) Total amount of securities to be offered and amount of securities to be offered in this state.

(e) The price at which the securities are to be offered for sale to the public; any variation therefrom at which any portion of the offering is to be made to any persons, other than as underwriting and selling discounts or commissions; and the estimated maximum aggregate underwriting and selling discounts or commissions and finders' fees (including cash, securities, or anything else of value).

(f) Names and addresses of the managing underwriters and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

(g) Description of any security options outstanding or to be created in connection with the offering.

(h) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the United States securities and exchange commission.

(i) A copy of any offering circular or prospectus to be used in connection with the offering.

(j) In the case of any registration under section 8 (b) relating to non-issuer distribution which does not also satisfy the conditions of section 8 (1) (a), a balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement, and a summary of earnings for each of the two (2) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than two (2) years.

(k) A consent to service of process meeting the requirements of section 15 of this act.

(3) If no stop order is in effect and no proceeding is pending under sections 12 and 12 (3), a registration statement by notification automatically becomes effective at three (3) o'clock mountain standard time in the afternoon of the second (2nd) full business day after the filing of the registration statement or the last amendment, or at such earlier time as the commissioner determines.

Registration
statement
by notification
effective when.

Section 9. **Registration by coordination.** (1) Any security for which a registration statement has been filed under the securities act of 1933, or any securities for which filings have been made pursuant to regulation A or regulation E, and amendments thereto, of the general rules and regulations of the United States securities and exchange commission, adopted pursuant to subsection (b) of section 3 of said securities act of 1933, in connection with the same offering may be registered by coordination. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 16:

Registration by
coordination.

Statement,
documents
and fee.

(a) Three (3) copies of the prospectus or offering circular and letter of notification filed under the securities act of 1933 or the general rules and regulations thereunder, together with all amendments thereto.

(b) The amount of securities to be offered in this state.

(c) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed.

(d) Any adverse order, judgment or decree previously entered in connection with the offering by any court or the securities and exchange commission.

(e) If the Commissioner by rule or otherwise requires, a copy of the articles of incorporation and by-laws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(f) If the commissioner requests, any other information, or copies of any other documents, filed under the securities act of 1933;

(g) An undertaking to forward promptly all amendments to the federal registration statement or offering circular and letter of notification, other than an amendment which merely delays the effective date; and

(h) A consent to service of process meeting the requirements of section 15 of this act.

Registration
statement by
coordination
effective when.

(2) A registration statement by coordination under section 9 automatically becomes effective at the moment the federal registration statement or other filing becomes effective if all the following conditions are satisfied:

(a) No stop order is in effect and no proceeding is pending under sections 12 and 12 (3),

(b) The registration statement has been on file with the commissioner for at least ten (10) days, and

(c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two (2) full business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the commissioner of the date and time when the federal registration statement or other filings

became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(3) Upon failure to receive the required notification and post-effective amendment with respect to the price amendment referred to in subdivision (2) of this section, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with subdivision (2) of this section, if he promptly notifies the registrant of the issuance of the order. If the registrant proves compliance with the requirements as to notice and post-effective amendment, the stop order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in subdivisions (2) (b) and (2) (c) of this section. If the federal registration statement or other filing becomes effective before all these conditions are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement or other filing is expected to become effective the commissioner shall promptly advise the registrant whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under sections 12 and 12 (3); but this advice by the commissioner does not preclude the institution of such a proceeding at any time.

Commissioner
may enter
stop order.

Section 10. **Registration by qualification.** (1) Any security may be registered by qualification. A registration statement under this section shall contain the following information and be accompanied by the following documents, in addition to payment of the registration fee prescribed in section 16.

Registration by
qualification—
statement,
documents
and fee.

(a) With respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization;

Registration by
qualification—
statement,
documents
and fee—
continued.

the general character and location of its business and a description of its physical properties and equipment.

(b) With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five (5) years; the amount of securities of the issuer held by him as of a specified date within ninety (90) days of the filing of the registration statement; the remuneration paid to all such persons in the aggregate during the past twelve (12) months, and estimated to be paid during the next twelve (12) months, directly or indirectly, by the issuer (together with all predecessors, parents and subsidiaries).

(c) With respect to any person not named in subdivision (b), owning of record, or beneficially if known, ten percent (10%) or more of the outstanding shares of any class of equity security of the issuer: the information specified in subdivision (b) other than his occupation.

(d) With respect to every promoter, not named in subdivision (b), if the issuer was organized within the past three (3) years: the information specified in subdivision (b), any amount paid to him by the issuer within that period or intended to be paid to him, and the consideration for any such payment.

(e) The capitalization and long-term debt (on both a current and a pro forma basis) of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration (whether in the form of cash, physical assets, services, patents, goodwill, or anything else) for which the issuer or any subsidiary has issued any of its securities within the past two (2) years or is obligated to issue any of its securities.

(f) The kind and amount of securities to be offered; the amount to be offered in this state; the proposed offering price and any variation therefrom at which any portion of the offering is to be made to any persons except as underwriting and selling discounts and commissions; the estimated aggregate underwriting and selling discounts, commissions and other promotional fees (includ-

ing separately cash, securities, or anything else of value to accrue to the underwriters in connection with the offering); the estimated amounts of other selling expenses, and legal, engineering, and accounting expenses to be incurred by the issuer in connection with the offering; the name and address of every underwriter and every recipient of a promotional fee; a copy of any underwriting or selling group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

Registration by
qualification—
statement,
documents
and fee—
continued.

(g) The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the amounts of any funds to be raised from other sources to achieve the purposes stated, and the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property (including goodwill) otherwise than in the ordinary course of business, the names and addresses of the vendors and the purchase price.

(h) A description of any stock options or other security options outstanding, or to be created in connection with the offering, together with the amount of any such options held or to be held by every person required to be named in subdivisions (b), (c), (d), (e), or (g) and by any person who holds or will hold ten percent (10%) or more in the aggregate of any such options.

(i) The states in which a registration statement or similar document in connection with the offering has been or is expected to be filed.

(j) Any adverse order, judgment, or decree previously entered in connection with the offering by any court or the securities and exchange commission; a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including any such litigation or proceeding known to be contemplated by governmental authorities).

(k) A copy of any prospectus or circular intended as

of the effective date to be used in connection with the offering.

(l) A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and by-laws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.

(m) A signed or conformed copy of an opinion of counsel, if available, as to the legality of the security being registered.

(n) A balance sheet of the issuer as of a date within four (4) months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three (3) fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three (3) years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if that business were the registrant.

(o) A consent to service of process meeting the requirements of section 15 of this act.

Exemption—
information
unknown

(2) In the case of a non-issuer distribution, information may not be required under section 10 unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

Registration
statement by
qualification
effective when.

(3) A registration statement by qualification under section 10 becomes effective when the commissioner so orders. The commissioner may require as a condition of registration under this section that a prospectus containing any designated part of the information specified in section 10 be sent or given to each person to whom an offer is made before or concurrently with (1) the first (1st) written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer

who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution, (2) the confirmation of any sale made by or for the account of any such person, (3) payment pursuant to any such sale, or (4) delivery of the security pursuant to any such sale, whichever first occurs; but the commissioner shall accept for use under any such requirement a current prospectus or offering circular regarding the same securities filed under the securities act of 1933 or regulations thereunder.

Section 11. General provisions regarding registration of securities.

(1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under this act or a predecessor act within five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

Filing
registration
statement.

(2) The commissioner may require as a condition of registration by qualification or coordination (1) that any security issued within the past three (3) years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The commissioner may determine the conditions of any escrow or impounding required hereunder but he may not reject a depository solely because of location in another state.

Commissioner
may require
deposit in escrow.

(3) When securities are registered by notification, coordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered or by any registered broker-dealer. Every registration shall remain effective until revoked by the commissioner or until terminated upon request of the registrant with the consent of the commissioner. All outstanding securities of the same class as a registered security

Registration
of securities
effective until
revocation or
termination.

are considered to be registered for the purpose of any non-issuer transaction. A registration statement which has become effective may not be withdrawn for one (1) year from its effective date if any securities of the same class are outstanding.

Commissioner
may require
progress reports.

(4) (a) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which (a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the investment company act of 1940, or (b) are being offered and sold directly by or for the account of the issuer.

Financial
statements
required.

(b) During the period of public offering in the initial distribution of securities registered under the provisions of this act by notification or qualification, financial data or statements corresponding to those required under the provisions of sections 8 (2) and 10, and to the issuer's fiscal year, shall be filed with the commissioner annually, not less than ninety (90) days after the end of each such year. If such statements are not certified the commissioner may verify them by examining the issuer's books and records.

Section 12. Denial, suspension and revocation of registration of securities.

Commissioner may
order denial,
suspension or
revocation of
registration
statement—
when.

(1) The commissioner may issue an order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds that the order is in the public interest and that:

(a) the registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) any provision of this act or any rule, order, or condition lawfully imposed under this act has been wilfully violated, in connection with the offering by (a) the person filing the registration statement, (b) the issuer,

any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (c) any underwriter;

(c) the security registered or sought to be registered is the subject of a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but (a) the commissioner may not institute a proceeding against an effective registration statement under this clause more than one (1) year from the date of the injunction relied on, and (b) he may not enter an order under this clause on the basis of an injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for an order under this section;

(d) the issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(e) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(f) when a security is sought to be registered by notification, it is not eligible for such registration;

(g) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by section 9 (g);

(h) the applicant or registrant has failed to pay the proper registration fee; but the commissioner may enter only a denial order under this subsection and he shall vacate any such order when the deficiency has been corrected, or

(i) the offering has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or unreasonable amounts or kinds of options.

(2) The commissioner may not enter a stop order against an effective registration statement on the basis

Limitation
on stop order.

of a fact or transaction known to him when the registration statement became effective.

Notice.

Hearing may be requested.

(3) Upon the entry of an order under subdivision (1) of this section, the commissioner shall promptly notify the issuer of the securities and the applicant or registrant that an order has been entered and of the reasons therefor and that if requested by the issuer or registrant within fifteen (15) days after the receipt of the commissioner's notification the matter will be set promptly down for hearing. If no hearing is requested within fifteen (15) days and none is ordered by the commissioner the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing may affirm, modify or vacate the order.

Exempt securities enumerated.

Section 13. **Exempt securities.** Sections 7 through 12, inclusive, of this act shall not apply to any of the following securities:

(1) Any security (including a revenue obligation) issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one (1) or more of the foregoing; or any certificate of deposit for any of the foregoing.

(2) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one (1) or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor.

(3) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, or trust company organized or chartered as such and under the jurisdiction and supervision of the superintendent of banks of any state.

(4) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(5) Any insurance or endowment policy or annuity contract or optional annuity contract, issued by a corporation subject to the supervision of the insurance commissioner.

Exempt securities
enumerated—
(cont'd.)

(6) Any security issued or guaranteed by any federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state.

(7) Any security issued or guaranteed by any railroad, other common carrier, public utility, or holding company which is (a) subject to the jurisdiction of the interstate commerce commission; (b) a registered holding company under the public utility holding company act of 1935 or a subsidiary of such a company within the meaning of that act; (c) regulated in respect of its rates and charges by a governmental authority of the United States or any state or municipality; or (d) regulated in respect to the issuance or guarantee of the security by a governmental authority of the United States, any state, Canada, or any Canadian province; also equipment trust certificates in respect to equipment conditionally sold or leased to a railroad or public utility, if other securities issued by such railroad or public utility would be exempt under this subsection.

(8) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American stock exchange, the midwest stock exchange, or any other stock exchange registered with the federal securities and exchange commission and approved by the commissioner; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing.

(9) Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes.

(10) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transaction, and which evidences an obligation to pay cash within nine (9) months of the date

Exempt securities
enumerated—
(cont'd.)

of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal, when such commercial paper is sold to the banks or insurance companies.

(11) Any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan.

Exempt
transactions
enumerated.

Section 14. **Exempt transactions.** Except as hereinafter in this section expressly provided, sections 6 through 12 inclusive of this act shall not apply to any of the following transactions:

(1) Any isolated transaction, whether affected through a broker-dealer or not.

(2) Any non-issuer distribution of an outstanding security by a registered broker-dealer if (a) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen (18) months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or (b) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three (3) preceding fiscal years, or during the existence of the issuer and any predecessors if less than three (3) years, in the payment of principal, interest, or dividends on the security.

(3) Any non-issuer transaction effected by or through a registered broker-dealer pursuant to an unsolicited order or offer to buy; but the commissioner may require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each such form be preserved by the broker-dealer for a specified period.

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters.

(5) Any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator, in the performance of his official duties as such.

(6) Any transaction executed by a bona fide pledgee without any purpose of evading this act.

Exempt
transactions
enumerated—
(cont'd.)

(7) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the investment company act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(8) Any transaction pursuant to an offer directed by the offerer to not more than ten (10) persons (other than those designated in subsection (7)) in this state during any period of twelve (12) consecutive months, whether or not the offerer or any of the offerees is then present in this state, if (a) the seller reasonably believes that all the buyers are purchasing for investment, and (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer.

(9) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten (10), and (c) no payment is made by any subscriber.

(10) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, non-transferable warrants, or transferable warrants exercisable within not more than ninety (90) days of their issuance, if (a) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (b) the issuer first files a notice specifying the terms of the offer and the commissioner does not by order disallow either (a) or (b) of this subsection.

(11) Any offer (but not a sale) of a security for which registration statements have been filed under both this act and the securities act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act.

Exempt
transactions
enumerated—
(cont'd.)

(12) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the distribution other than the surrender of a right to a cash dividend where the stockholder can elect to take a dividend in cash or stock.

(13) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation or sale of assets.

Commissioner
may deny
or revoke
exemption.

Notice.

Hearing may
be requested.

The commissioner may by order deny or revoke the exemption specified in subsection (2) with respect to a specific security. Upon the entry of such an order, the commissioner shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen (15) days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination. No order under this subsection may operate retroactively. No person may be considered to have violated this act by reason of any offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order.

Consent to service
of process—
appointment of
commissioner
to accept.

Section 15. Consent to service of process. Every applicant for registration as a broker-dealer or investment adviser or salesman under this act, and every issuer which proposes to offer a security in this state, shall file with the commissioner, in such form as he prescribes, an irrevocable consent appointing the commissioner and his successors in office to be the attorney of the applicant to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or its or his successor, executor or administrator which arises under this act or any rule or order hereunder after the consent has been filed, with the same force and validity as if

served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless (1) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at its or his last address on file with the commissioner, and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

Section 16. **Fees.** The following fees shall be paid in advance under the provisions of this act:

Fees shall be
paid in advance.

(1) For the registration of securities by notification or coordination or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of one hundred dollars (\$100.00) for the first one hundred thousand dollars (\$100,000.00) of initial issue, or portion thereof in this state, based on offering price; plus one-twentieth (1/20th) of one percent (1%) for any excess over one hundred thousand dollars (\$100,000.00), with a maximum of one thousand dollars (\$1,000.00).

Each year thereafter that a registration remains in effect for securities with respect to which reports are required to be filed under subsection (4) (a) of section 11, an additional registration fee shall be paid to the commissioner to be computed at one-twentieth (1/20th) of one percent (1%) of the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00). The registration statement for such securities may be amended to increase the amount of securities to be offered. When an application for registration of securities is denied or withdrawn the commissioner shall retain fifty dollars (\$50.00) of the fee.

(2) For filing an annual statement, the fee shall be ten dollars (\$10.00).

(3) For registration of a broker-dealer or investment adviser, the fee shall be one hundred dollars (\$100.00) for original registration and one hundred dollars (\$100.00) for each annual renewal thereof. When an application is denied or withdrawn the commissioner shall retain one-half ($\frac{1}{2}$) of the fee.

(4) For registration of a salesman, the fee shall be ten dollars (\$10.00) for original registration with each employer; ten dollars (\$10.00) for each annual renewal. When an application is denied or withdrawn the commissioner shall retain one-half ($\frac{1}{2}$) of the fee.

(5) For certified copies of any documents filed with the commissioner, the fee shall be the cost to the department.

Unlawful to make misleading filings.

Section 17. **Misleading filings.** It is unlawful for any person to knowingly make or cause to be made, in any document filed with the commissioner or in any proceeding under this act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

Unlawful to make false representations.

Section 18. **Unlawful representation concerning registration or exemption.** Neither the fact that an application for registration under section 6 (2), a registration statement under sections 8, 9 or 10 has been filed, nor the fact that a person or security is effectively registered, constitutes a finding by the commissioner that any document filed under this act is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits of qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with this section.

Commissioner may investigate.

Section 19. **Investigations and subpoenas.** (1) The commissioner in his discretion (1) may make such public or private investigations or examinations within or without this state as he deems necessary to determine whether any registration should be granted, denied or revoked or whether any person has violated or is about to violate any provision of this act or any rule or order

hereunder, or to aid in the enforcement of this act or in the prescribing of rules and forms hereunder, (2) may require or permit any person to file a statement in writing, under oath or otherwise as the commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated, and (3) may publish information concerning any violation of this act or any rule or order hereunder.

(2) For the purpose of any investigation or proceeding under this act, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

May administer
oaths, issue
subpoenas.

(a) In case of contumacy by, or refusal to obey a subpoena issued to, any person, any court of competent jurisdiction, upon application by the commissioner, may issue to that person an order requiring him to appear before the commissioner, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question; and any failure to obey the order of the court may be punished by the court as a contempt of court.

Contempt
proceedings.

(b) No person is excused from attending and testifying or from producing any document or record before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by him, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

Self-incrimination
no excuse.

Section 20. **Injunctions.** Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation

Injunctions.

of any provision of this act or any rule or order hereunder, he may in his discretion bring an action in any court of competent jurisdiction to enjoin any such acts or practices and to enforce compliance with this act or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The commissioner may not be required to post a bond.

Penalties.

Section 21. **Criminal liabilities.** (1) Any person who wilfully violates any provision of this act except section 17, or who wilfully violates any rule or order under this act, or who wilfully violates section 17 knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than five thousand dollars (\$5,000.00) or imprisoned not more than three (3) years, or both; however, in the event the person so convicted has been previously convicted of a felony in any way involving securities, imprisonment hereunder for not less than one (1) year shall be mandatory. No indictment or information may be returned under this act more than five (5) years after the alleged violation.

(2) The commissioner may refer such evidence as may be available concerning violations of this act or of any rule or order hereunder to the attorney general or the proper prosecuting attorney, who may in his discretion, with or without such a reference, institute the appropriate criminal proceedings under this act.

(3) Nothing in this act limits the power of the state to punish any person for any conduct which constitutes a crime.

Civil liabilities.

Section 22. **Civil liabilities.** (1) Any person who offers or sells a security in violation of any provisions of sections 7 through 10 of this chapter or offers or sells a security by means of fraud or misrepresentation is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent (6%) per annum from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the

security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less (a) the value of the security when the buyer disposed of it and (b) interest at six percent (6%) per annum from the date of disposition.

(2) Every person who directly or indirectly controls a seller liable under subsection (1), every partner, officer or director (or person occupying a similar status or performing similar functions) or employee of such a seller, and every broker-dealer or salesman who participates or materially aids in the sale is liable jointly and severally with and to the same extent as the seller, if the non-seller knew or in the exercise of reasonable care could have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution among the several persons so liable.

(3) Any tender specified in this section may be made at any time before entry of judgment. A cause of action under this statute survives the death of any person who might have been a plaintiff or a defendant. No person may sue under this section more than two (2) years after the contract of sale. No person may sue under this section (a) if the buyer has received a written offer at a time when he owned the security, to refund the consideration paid together with interest at six percent (6%) per annum from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within thirty (30) days of its receipt, or (b) if the buyer has received a written offer at a time when he did not own the security in the amount that would be recoverable under section 22 (1) of this title upon a tender less (1) the value of the security when the buyer disposed of it and (2) interest at six percent (6%) per annum from the date of disposition.

(4) No person who has made or engaged in the performance of any contract in violation of any provision of this act or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract. Any condition, stipulation, or provision binding any person acquiring any security to waive compliance

with any provision of this act or any rule or order hereunder is void as against public policy and in the public interest.

Judicial review
of orders.

Section 23. Judicial review of orders. Any person aggrieved by a final order of the commissioner may obtain a review of the order in any court of competent jurisdiction by filing in court, within sixty (60) days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the commissioner, and thereupon the commissioner shall certify and file in court a copy of the filing, testimony, and other evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part. The findings of the commissioner as to the facts, if supported by creditable evidence, are conclusive, unless appealed from. If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for failure to adduce the evidence in the hearing before the commissioner, the court may order the taking of additional evidence in such manner and upon such conditions as the court may consider proper. The commencement of proceedings under this action does not, unless specifically ordered by the court, operate as a stay of the commissioner's order.

Administration
by state auditor,
ex-officio
investment
commissioner.

Section 24. Administration of act. (1) The administration of the provisions of this act shall be under the general supervision and control of the state auditor, the ex officio investment commissioner. The commissioner may from time to time make, amend, and rescind such rules and forms as are necessary to carry out the provisions of this act. No rule or form may be made unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this act. In prescribing rules and forms the commissioner may cooperate with the securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this act to achieve maximum uniformity in the

form and content of registration statements, applications, and reports wherever practicable.

(2) Any issuer or broker-dealer who is investigated or examined in connection with a registration under this act shall reimburse the commissioner, or any of his duly authorized agents, officers or employees for actual travel expenses, a reasonable living expense allowance, and a per diem as compensation of examiners, as necessarily incurred on account of the examination, all at reasonable rates customary therefor and as established and adopted by the commissioner, upon the effective date of this act and annually thereafter, upon presentation of a detailed account of such charges and expenses by the commissioner or pursuant to his written authorization. No person shall pay and no examiner shall accept any additional emolument on account of any such examination.

Reimbursement
for expenses.

There is hereby created in the state treasury a special fund to be known as the "investment department examinations revolving fund." The commissioner shall pay to the state treasurer to the credit of this special fund all monies received hereunder. This fund shall be used only for or toward payment of travel, living allowance and other expenses incurred by the commissioner and his examiners in the making of examinations under this code, and the compensation of such examiners, upon such bases as the commissioner may fix for the purposes of this section. In lieu of deposit thereof in such fund, the commissioner may give written authorization for payment, by the person examined, of such travel expenses and living allowance direct to the examiner. Any other law of this state to the contrary notwithstanding, the travel expense and living allowance of examiners shall be as fixed by the commissioner pursuant to this section.

Fund created—
disposition.

If any issuer or broker-dealer fails to pay the charges and expenses referred to above the same shall be paid out of the funds of the commissioner in the same manner as other disbursements of such funds. The amount so paid shall be a first lien upon all of the assets and property in this state of such issuer or broker-dealer, and may be recovered by suit by the attorney general on behalf of the State of Montana, and restored to the appropriate fund. Failure of such issuer or broker-dealer to pay such

charges and expenses shall also work a forfeiture of his or its right to do business in this state under this act.

Unlawful to use
information for
personal benefit.

(3) It is unlawful for the commissioner or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not made public. No provision of this act authorizes the commissioner or any of his officers or employees to disclose any such information or the fact that any investigation is being made, except among themselves or when necessary or appropriate in a proceeding or investigation under this act.

Application.

(4) No provision of this act imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule or form may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

Hearings shall
be public.

(5) Every hearing in an administrative proceeding shall be public unless the commissioner in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.

Register
shall be kept.

(6) A document is filed when it is received by the commissioner. The commissioner shall keep a register of all applications for registration and registration statements which are or have ever been effective under this act and all denial, suspension, or revocation orders which have ever been entered under this act. The register shall be open for public inspection. The information contained in or filed with any registration statement, application, or report may be made available to the public under such rules as the commissioner prescribes.

Copies.

(7) Upon request and at such reasonable charges as he prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this act, any copy so certified is prima facie evidence of the contents of the entry or document certified.

Burden of proof—
exemption.

Section 25. **Proof of exemption.** In any proceeding under this act, the burden of proving an exemption or

an exception from a definition is upon the person claiming it.

Section 26. All effective permits issued under prior law relating to the sale of any security and all conditions imposed upon such permits shall remain in effect so long as they would have remained in effect had they become effective under this act subject, however, to the payment on September 1, 1961 by the issuer of such securities of a renewal registration fee required by section 16 of this act. All stockbrokers and salesmen registered under prior law on the effective date of this act shall be deemed duly registered under and subject to the provisions of this act, such registration to expire on March 1, 1962 and to be subject to renewal as provided in this act. Permits effective.

Section 27. **Constitutionality.** If any part or parts of this act shall be held unconstitutional, such unconstitutionality shall not affect the validity of the remaining parts of this act. The legislature hereby declares that it would have passed the remaining parts of this act if it had known that such part or parts thereof would be declared unconstitutional. Severability clause.

Section 28. That section 66-2001; section 66-2002, as amended by section 1, chapter 178, laws of Montana, 1957; section 66-2003, as amended by section 2, chapter 178, laws of Montana, 1957; sections 66-2004 through 66-2006; section 66-2007, as amended by section 3, chapter 178, laws of Montana, 1957; sections 66-2008 through 66-2017; section 66-2018, as amended by section 4, chapter 178, laws of Montana, 1957; sections 66-2019 through 66-2022; section 66-2023, as amended by section 5, chapter 178, laws of Montana, 1957; section 66-2024, as amended by section 6, chapter 178, laws of Montana, 1957; sections 66-2025 and 66-2026, Revised Codes of Montana, 1947, and all acts and parts of acts in conflict herewith are hereby repealed. Repealing clause.

Section 29. This act shall be in full force and effect from and after July 1, 1961. Effective
July 1, 1961.

Approved March 17, 1961.